

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

CHERYL GORMAN

)

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VS.

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W.C.C. 2008-07643

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UNIVERSITY SHUTTLE

)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter came to be heard before the Appellate Division on the employee's appeal from the decision and decree of the trial judge denying the employee's petition to review alleging a return to total incapacity from April 17, 2008 to July 2, 2008 and partial incapacity from July 3, 2008 and continuing, following neck surgery. The issue before the trial judge was whether the surgery was necessitated by the effects of the employee's work related injury which occurred in 2004. After a thorough review of the record and consideration of the arguments of the respective parties, we deny the employee's appeal and affirm the decision and decree of the trial judge.

Ms. Gorman was injured on March 26, 2004 while employed as a bus driver for University Shuttle when the shuttle bus she was driving was struck on the passenger side by another motor vehicle. A Memorandum of Agreement dated June 4, 2004 described the injury as a low back strain and indicated that she was partially disabled as of April 9, 2004. Pursuant to a pretrial order entered on May 8, 2006 in W.C.C. No. 2006-01319, the description of the injury was amended to include "neck." On that same date, a pretrial order was also entered in W.C.C.

No. 2006-00353, finding that the employee's incapacity for work had ended based upon the opinion of Dr. Vaughn Gooding, an impartial medical examiner appointed by the court.

Ms. Gorman testified that her job with the respondent required her to drive a shuttle bus from off-campus housing to the campuses of Rhode Island School of Design and Brown University. She worked a ten (10) hour shift on Friday and Saturday evenings for a total of twenty (20) hours per week. She also worked thirty-five (35) hours a week, plus occasional overtime, as a clerical coordinator for the transmission and distribution department of the Providence Water Supply Board (Board). Ms. Gorman explained that this was primarily a clerical position with some minor lifting and bending associated with moving files. After her work injury on March 26, 2004, the employee stopped working for University Shuttle, but continued to work for the Board until May 31, 2005. She was out of work from both jobs until October 16, 2005, when she returned to her job with the Board. The employee asserted that she could not return to work driving a shuttle bus because she would experience increasing pain, burning and numbness in her neck and right arm after sitting in a vehicle for an extended period of time.

The employee related that immediately following her work injury, she was seen by Dr. David Kerzer who referred her to Dr. Michael Mariorenzi for treatment. She also was referred for a surgical consultation with Dr. Alexander Robertson in 2006, but declined surgery at that time. After her workers' compensation benefits were discontinued on May 8, 2006, the employee continued to see Dr. Mariorenzi and also treated with her family physician, Dr. Matthew Salisbury. She testified that she continued to experience moderate to severe pain which increased over the next few years. After undergoing an MRI in 2008, Dr. Salisbury referred the employee to Dr. Prakash Sampath, who performed surgery on her neck on April 17, 2008. Ms.

Gorman was not employed from the date of the surgery until July 2, 2008, when she returned to work at the Board. She never returned to work for University Shuttle, asserting that she still was unable to sit in a vehicle for an extended period of time.

The medical evidence presented by the parties consists of the deposition, affidavit and records of Dr. Sampath, the deposition and records of Dr. Stephen Saris, and the report of Dr. Vaughn G. Gooding regarding an impartial medical examination he conducted of the employee on February 11, 2009. Dr. Sampath, a neurosurgeon, saw Ms. Gorman for the first time on March 21, 2008. At that time, the employee advised him that she had sustained a work-related injury on March 26, 2004 which resulted in severe neck pain, bilateral shoulder pain, and pain and numbness radiating down her arms to her fingertips. The doctor reviewed an MRI of the cervical spine done on February 8, 2008 which he stated showed spondylosis, or preexistent degenerative disc disease, at the C4-5 and C6-7 levels, and a focal area of edema in the spinal cord at the C5-6 level. The radiologist who performed the MRI compared the results to an MRI done on November 8, 2005 and stated in his report that “[t]here has been the interval development of a focus of T2 signal in the right paracentral spinal cord at this level suggestive of malacia and/or edema.” Ee’s Ex. 4, MRI report 2/8/08. Dr. Sampath recommended decompression surgery due to his concern that the edema indicated a possible spinal cord injury. On April 17, 2008, the doctor performed an anterior cervical discectomy at C4-5, C5-6 and C6-7 followed by fusion.

Dr. Sampath testified that the edema was most likely caused by a traumatic injury. When questioned during his deposition as to when such an injury would have occurred, the doctor acknowledged that the edema developed sometime after the MRI on November 8, 2005, which was more than a year after the employee’s work-related injury. He explained that when an injury

is not severely traumatic, the pressure on the spinal cord may be more subtle and the edema may not appear on an MRI for months, or possibly years, later. Dr. Sampath stated that in his opinion, the condition he diagnosed, cervical spondylosis with cervical spinal cord edema or myelomalacia, was caused or exacerbated by the employee's work-related injury of March 26, 2004. He also opined that the surgery he performed was necessary to cure, rehabilitate or relieve the employee from the effects of the work-related injury.

Dr. Saris, a neurosurgeon, evaluated the employee on December 16, 2008 at the request of the employer. The employee related to the doctor that she never had any neck problems prior to the work injury, and that she experienced neck and right arm problems immediately after the accident on March 26, 2004. She also complained that she has moderate to severe neck and arm pain, which is getting worse, despite undergoing surgery in April 2008. The employee's physical examination was normal, although the doctor indicated that the employee demonstrated three (3) positive Waddell's signs, which are indicative of symptom exaggeration. Dr. Saris was provided with extensive medical records regarding the employee's treatment and diagnostic testing since the date of her injury. Based upon his review of those records as well as his own examination, the doctor concluded that Ms. Gorman had sustained a whiplash injury, or soft tissue injury, as a result of the work-related accident, which would have healed within a few months. He explained that sometime between the date of the accident and the MRI in 2008, she ruptured a disc at C5-6 which would have required surgery, but it was not related to the 2004 accident. The doctor did not believe that the surgical procedures at the C4-5 and C6-7 levels were necessary.

Dr. Saris acknowledged that the MRI in 2005 revealed two (2) disc bulges and a disc herniation, but he attributed those findings to the normal aging process. He indicated that an

acute traumatic disc protrusion is extraordinarily rare and that disc protrusions usually develop over the course of years due to daily wear and tear.

Dr. Gooding, an orthopedic surgeon, was appointed as an impartial medical examiner by the trial judge and evaluated Ms. Gorman on February 11, 2009. He had previously examined Ms. Gorman as an impartial medical examiner in April 2006, when he concluded that she was capable of returning to her job as a shuttle bus driver. The doctor noted that at the time of his examination in 2006, the employee's diagnoses were cervical strain, lumbar strain, and cervical radiculopathy. The physical examination done in 2009 was essentially normal, although the employee complained of continued pain in her neck and right arm since the surgery in April 2008. Dr. Gooding indicated in his report that the employee suffered from cervical arthritis and degenerative disc disease status post cervical fusion. He concluded that this condition was not related to the work-related motor vehicle accident, but was an underlying condition which had slowly progressed.

After thoroughly reviewing the testimony and documentary evidence, the trial judge, in a bench decision, denied the employee's petition to review. He noted the conflict in the opinions of Drs. Sampath and Saris as to whether the employee's condition in 2008 and subsequent surgery were related to the work-related injury she sustained in 2004. In order to resolve this conflict, the trial judge appointed Dr. Gooding as an impartial medical examiner. Dr. Gooding, according to the trial judge, had "no axe to grind one way or another," and the trial judge found the doctor's opinions "much more consistent with the opinions expressed by Dr. Saris that any problems that Ms. Gorman had in 2008 and for which Dr. Sampath operated were not caused by the motor vehicle collision that she was involved in while working for University Shuttle in 2004." Tr. at 58. In denying the employee's petition, the trial judge also noted that Dr. Sampath

did not operate on the employee until four (4) years after the original injury and more than three (3) years after another judge had determined that the incapacity resulting from the motor vehicle accident had ended. Tr. at 58. The employee filed a timely claim of appeal from the trial judge's decision and decree.

The parameters of the appellate scope of review of a decision rendered by a trial judge are very limited and are set forth in R.I.G.L. § 28-35-28(b), which states that “[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous.” In conformity with this standard, the Appellate Division will only conduct a *de novo* review of the evidence when a finding made by the trial judge is first determined to be clearly wrong. Grimes Box. Co. v. Miguel, 509 A.2d 1002, 1004 (R.I. 1986). After thoroughly reviewing the record and the relevant case law, we do not find that the trial judge was clearly wrong in concluding that the employee failed to prove a causal relationship between her March 26, 2004 work-related injury and her subsequent neck surgery and resulting incapacity four (4) years later.

The employee has filed four (4) reasons of appeal. In the first three (3) reasons, she simply states that the trial judge's decree is against the law, against the evidence, and against the law and the evidence and the weight thereof. Clearly, these reasons of appeal lack the specificity required by R.I.G.L. § 28-35-28(a). An appellant claiming an appeal to the Appellate Division from the decree of a trial judge must file “reasons of appeal stating specifically all matters determined adversely to him or her which he or she desires to appeal, together with so much of the transcript of testimony and rulings as he or she deems pertinent.” Id. The employee's first three (3) reasons of appeal are “nothing more than general recitations that the decree was against the law and the evidence,” as well as the weight thereof. Bissonnette v. Federal Dairy Co., Inc.,

472 A.2d 1223, 1226 (R.I. 1984). The Rhode Island Supreme Court has held that such overbroad and vague reasons of appeal can be properly denied and dismissed for failure to comply with the specificity requirements of R.I.G.L. § 28-35-28(a). *See id.*

In her fourth reason of appeal, the employee contends that the trial judge erred in denying her petition because the opinions of Drs. Saris and Gooding were flawed. She argues that the trial judge could not rely upon the opinion of Dr. Saris because the doctor erroneously concluded that the employee suffered from a degenerative disc herniation rather than a traumatic disc herniation caused by the motor vehicle accident. The employee also contends that the trial judge's reliance on the opinion of Dr. Gooding was error because Dr. Gooding was of the opinion that the employee suffered only a cervical strain as a result of the motor vehicle accident, when the diagnostic testing indicated that she suffered a disc herniation.

As noted previously, on May 8, 2006, two (2) pretrial orders were entered regarding Ms. Gorman's work injury. Pursuant to the employee's petition to review, the description of the injury was amended to include "neck." In addition, based upon an impartial medical examination conducted by Dr. Gooding, the employer's petition to discontinue the payment of weekly benefits was granted with the finding that the employee's incapacity had ended. At the time these orders were entered, the results of the MRI studies done in September 2004 and November 2005 were available, both of which indicated a central disc herniation at C5-6. Yet, the employee did not appeal either of these orders, or make any other attempt to establish that the disc herniation was caused by the work injury. Therefore, a causal relationship between the disc herniation demonstrated on the MRI studies and the employee's work injury was never documented.

Furthermore, the employee did not produce any medical evidence documenting the diagnosis of a herniated cervical disc and connecting it to the work injury, prior to 2008. In 2006, Dr. Gooding diagnosed a cervical and lumbar strain resulting from the work injury, and Dr. Saris noted that Dr. Michael Mariorenzi, the treating physician, and Dr. Mehrdad Motamed, had diagnosed a soft tissue injury to the neck prior to 2006. The results of the MRI studies done in 2004 and 2005 were certainly available to these physicians, yet they did not find that the employee suffered a disc herniation as a result of the work injury. The fact that the “neck” is included in the description of the injury does not automatically incorporate any and all abnormalities of that part of the body as part of the work injury.

The fact that the MRI studies done after the motor vehicle accident revealed a disc herniation no more establishes that it was a traumatic herniation related to the accident than it proves that it was an underlying, preexisting herniation. The testing also revealed degenerative changes to the cervical spine. In Dr. Sampath’s report dated March 21, 2008, he characterizes the MRI study in 2008 as showing significant degenerative disc disease, especially at C5-6 and C4-5. In addition, the radiologist’s report of the 2008 MRI states that the degenerative changes at the C6-7 level are more conspicuous and the disc bulge shown at that level in 2004 and 2005 was now classified as a disc protrusion with significant foraminal narrowing. Dr. Saris drew upon his many years of experience as a neurosurgeon treating numerous patients with neck problems when he asserted that “[a]n acute traumatic protrusion is something that would be extraordinarily rare. The high probability is her [the employee’s] herniation was something that was long-standing.” Er’s Ex. 1 at 18. The opinions of Dr. Saris were certainly competent and the trial judge did not err in citing those opinions as additional support for the conclusion reached

by Dr. Gooding that the surgery performed by Dr. Sampath and resulting incapacity were not causally related to the work injury.

The employee argues that the trial judge could not rely upon the opinion of Dr. Gooding because he did not address whether the work-related motor vehicle accident aggravated, or rendered symptomatic, the employee's cervical disc disease and cervical arthritis. Ms. Gorman further contends that his diagnosis of a cervical strain was incorrect because the 2004 and 2005 MRI studies show that the employee sustained a herniated disc due to the accident. Dr. Gooding submitted a two (2) page report of his impartial medical examination to the trial judge which was admitted into evidence. Neither party chose to depose the doctor. In his report, the doctor stated his opinion that the cervical disc disease and arthritis are not related to the work injury and are most likely underlying conditions which have slowly progressed. The doctor is not obliged to eliminate all other potential theories of causation in order to render a competent medical opinion. If the employee believed that an opinion from Dr. Gooding regarding the possibility that the work injury aggravated her underlying condition would be helpful to her case, then she should have deposed the doctor in order to elicit that opinion. The fact that the doctor did not specifically address that possibility does not render his opinion incompetent or unreliable.

As noted above, the employee never specifically documented that the work injury caused a cervical disc herniation. A diagnostic test does not establish causation. It is clear from the MRI studies that the employee had degenerative disc disease in her cervical spine which pre-existed the work injury. In addition, in May 2006, it was determined that her incapacity had ended. Dr. Sampath performed surgery almost two (2) years later. It is not unreasonable to believe that the pre-existing degenerative disease had progressed, simply due to the passage of time, and caused additional problems. This position is supported by the results of the 2008 MRI

showing further progression of the disease. The reports of all three (3) MRI studies were made available to Dr. Gooding at the time of his examination. He maintained his opinion that the employee had sustained a cervical strain as a result of the work-related motor vehicle accident and that the surgery was not necessary to address the effects of the work injury. We find no reason to reject Dr. Gooding's opinion as incompetent.

The trial judge, in his bench decision, thoroughly examined all of the evidence presented by the parties and carefully explained the analysis and reasoning that led to his decision. He was initially presented with conflicting expert medical opinions and appointed Dr. Gooding as an impartial medical examiner to assist him in resolving the conflict. In cases where there are conflicting medical opinions, the Rhode Island Supreme Court has stated that the trial judge must be afforded the ability to give more weight to the opinion of one (1) doctor over another in reaching a decision. *See Parenteau v. Zimmerman Eng'g, Inc.*, 111 R.I. 68, 299 A.2d 168 (1973). The trial judge decided the opinions of Drs. Gooding and Saris were "more reliable in this case than the opinions expressed by Dr. Sampath," and, accordingly, gave more weight to the opinions of those doctors than to Dr. Sampath's testimony in reaching his decision. Tr. at 58. We find no reason to conclude that the trial judge was clearly erroneous in doing so. Exercising this type of discretion was well within the province of the trial judge and we find no reason to disturb his decision.

Based upon the foregoing, we deny and dismiss the employee's claim of appeal and affirm the decision and decree of the trial judge. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Ricci and Ferrieri, JJ., concur.

ENTER:

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Olsson, J.

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Ricci, J.

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Ferrieri, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the claim of appeal of the petitioner/employee and upon consideration thereof, the employee's appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on March 3, 2010 be, and they hereby are, affirmed.

Entered as the final decree of this Court this            day of

PER ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Ricci, J.

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Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Stephen M. Rappoport, Esq., and Francis T. Connor, Esq., on

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